

Union Calendar No. 10.

62D CONGRESS, } HOUSE OF REPRESENTATIVES. } REPORT
1st Session. } No. 33,

CONSTITUTIONS OF NEW MEXICO AND ARIZONA.

MAY 12, 1911.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

U. S. Cong. House
Mr. FLOOD of Virginia, from the Committee on the Territories, submitted the following

REPORT.

[To accompany H. J. Res. 14.]

The Committee on the Territories, to whom was referred the joint resolution (H. J. Res. 14) approving the constitutions formed by the constitutional conventions of the Territories of New Mexico and Arizona, having had the same under consideration, reports it back with a substitute and with the recommendation that the substitute do pass.

The act "To enable the people of New Mexico to form a constitution and State government and be admitted into the Union on an equal footing with the original States; and to enable the people of Arizona to form a constitution and State government and be admitted into the Union on an equal footing with the original States," approved June 20, 1910, provided that when the constitutions for the proposed States of New Mexico and Arizona therein provided for should be formed in accordance with the terms and conditions of said enabling act, and said constitutions so framed should have been ratified by the people of New Mexico and Arizona, respectively, at elections provided for in said enabling act, certified copies thereof should be submitted to the President of the United States and to Congress for approval, and that if Congress and the President should approve the constitutions, or if the President should approve said constitutions and Congress should fail to disapprove the same during the next regular session of Congress, then, and in that event, the President should certify the fact to the governors of New Mexico and Arizona, respectively, who should, within 30 days thereafter, issue proclamations for the election of State and county officers and other officers of said proposed States, as therein set forth.

The committee reports that constitutions have been framed by constitutional conventions in accordance with the terms and conditions of said enabling act and have been duly ratified by the people of New Mexico and Arizona, respectively, at elections held for that

purpose, and that certified copies thereof have been duly submitted to Congress and to the President of the United States for approval in accordance with the terms of said enabling act.

The committee further reports that on February 24, 1911, the President approved the said constitution of New Mexico in a message to the Congress as follows:

To the Senate and House of Representatives:

The act to enable the people of New Mexico to form a constitution and State government and be admitted into the Union on an equal footing with the original States, etc., passed June 20, 1910, provides that when the constitution, for the adoption of which provision is made in the act, shall have been duly ratified by the people of New Mexico in the manner provided in the statute, a certified copy of the same will be submitted to the President of the United States and to Congress for approval, and that if Congress and the President approve of such constitution, or if the President approve the same and Congress fails to disapprove the same during the next regular session thereof, then that the President shall certify said facts to the governor of New Mexico, who shall proceed to issue his proclamation for the election of State and county officers, etc.

The constitution prepared in accordance with the act of Congress has been duly ratified by the people of New Mexico, and a certified copy of the same has been submitted to me and also to the Congress for approval, in conformity with the provisions of the act. Inasmuch as the enabling act requires affirmative action by the President, I transmit herewith a copy of the constitution, which, I am advised, has also been separately submitted to Congress, according to the provisions of the act, by the authorities of New Mexico, and to which I have given my formal approval.

I recommend the approval of the same by the Congress.

WM. H. TAFT.

THE WHITE HOUSE, *February 24, 1911.*

The President so far has not acted on the said constitution of Arizona.

The committee further reports that it has had said constitutions under consideration and finds the same to be republican in form; that they make no distinction in civil or political rights on account of race or color, and that they are not repugnant to the Constitution of the United States or the Declaration of Independence, and that they are in conformity with the provisions of the enabling act.

The committee further reports that on February 16, 1911, Congress passed and the President approved a joint resolution entitled "Joint resolution reaffirming the boundary line between Texas and the Territory of New Mexico," defining the boundary line between the proposed State of New Mexico and the State of Texas, which boundary as defined in said resolution is not the boundary as defined in said constitution, and said joint resolution was passed to correct and define said boundary line and declared that any provision of said constitution that in any way tends to annul or change the boundary line defined in said joint resolution should be of no force or effect, but should be so construed as not in any way to change, affect, or alter said boundary lines defined in said joint resolution, and that the boundary line defined in said joint resolution "should be held and declared a conclusive location and settlement of said boundary lines."

The committee has carefully considered the said resolution so referred to it, and has had a number of meetings, at which citizens from the two Territories, particularly New Mexico, have appeared and been heard; representatives of the Anti-Saloon League and the Woman's Christian Temperance Union of New Mexico were also heard.

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The committee also had before it the report of the hearings and evidence produced before the same committee of the Sixty-first Congress on this question.

The substitute admits both of the Territories as States without approving the constitution of either; in fact, changes in both constitutions are suggested by the substitute, which in effect is a disapproval of both constitutions as adopted.

This has been done in order to meet the views of those Members of Congress who are willing to admit these Territories as States but who are averse to affirmatively approving their constitutions as adopted.

It the case of New Mexico the suggested change is in Article XIX of its proposed constitution, which is the article on amendments. The reason for submitting this suggested change is that this article, as contained in the proposed constitution, taken in connection with the apportionment for the members of the legislature, renders it extremely difficult, if not impossible, to amend this constitution.

Article XIX as adopted requires that amendments may be proposed by two-thirds of all the members elected to each house of the legislature, except that at the first regular session held after the expiration of two years, and every eight years thereafter, a majority can propose amendments; but in either case only three amendments can be submitted at one election, and this must be a general election, and all amendments must be ratified by a majority of the electors voting thereon, and this majority must equal 40 per cent of all of the votes cast for any purpose and 40 per cent of the vote cast in at least one-half of the counties of the State. The question of calling a constitutional convention can not be submitted to a vote of the people until the expiration of 25 years except by a three-fourths vote of all the members elected to each house of the legislature, and to call a convention during that period there must not only be a majority of all the electors voting at the election, but there must also be a majority of all the electors voting in one-half of the counties.

From a consideration of these provisions it will be seen that it will be extremely difficult for the people of New Mexico to secure the holding of a constitutional convention during the first 25 years, and when these provisions are considered in connection with the apportionment for members of the legislature provided by the constitution, the extreme difficulty of amending the constitution in any way will be manifest. By reference to the apportionment, it will be found that the four counties of Colfax, San Miguel, Bernalillo, and Socorro, with an aggregate population of 77,000, and which, on the basis adopted by the constitutional convention for representatives in the senate, would entitle this population to between five and six senators, are so apportioned that they constitute parts of 10 senatorial districts and can control the election of 10 of the 24 senators, and thus prevent the securing of two-thirds of the senators necessary to submit to the people an amendment to the constitution.

Then it will be further seen that if under such conditions an amendment is submitted to the people the Constitution makes it extremely difficult to secure the necessary vote for its adoption. To adopt such an amendment a majority of the electors voting on the amendment must of course vote for it, and in addition this majority must consist of 40 per cent of the vote cast on all questions and 40 per cent of the vote cast in one-half of the counties. Thus it will be seen that if an

amendment is submitted at a general election at which 25,000 votes are cast but only 10,000 votes cast upon the amendment, 9,000 of which are in favor of it and 1,000 against it, the amendment would be lost, because 40 per cent of all the votes cast at the election were not cast for the amendment. Or, again, if the amendment was popular in 12 of the 26 counties and unpopular in the other 14, 15,000 votes might be cast for it and none against it in the 12 counties, and 3,500 votes for it in the other 14 counties and 6,500 against it, and yet an amendment upon which there might have been 18,500 votes cast for and 6,500 votes against, would be lost. It is only necessary to call attention to such provisions to secure their condemnation.

It is moreover found that the population of the counties lying along the eastern border of New Mexico have increased very rapidly in population in the past decade and will probably increase more rapidly in the future. The apportionment provided in the constitution suggests the denial of adequate representation to the rapidly increasing population of that section for a long time, unless the constitution is made more easy of amendment.

Certain other provisions of the constitution as framed and adopted are very objectionable, and will in their operation be very oppressive to the people of the new State, and it is claimed that they were brought about at the instigation and in the interest of certain large corporations and special interests whom it is claimed exerted large influence in the framing of the proposed constitution. The committee, however, has not thought fit to undertake to correct such objectionable features because it did not feel that it was in the province of Congress to make a constitution for the proposed State.

The substitute resolution suggests an amendment to the proposed constitution of New Mexico, providing that any amendments may be proposed at any regular session by a majority of all the members elected to the legislature, and that the same shall be submitted to the electors for ratification or rejection at the next general election or at a special election, and if ratified by a majority of the electors voting thereon such amendment or amendments shall become a part of the constitution, thus putting it in the power of the people of the new State to amend their constitution if desirable to correct or eliminate any provisions thereof that may be found to be objectionable or oppressive.

The constitution also attempts to secure the original Mexican or Spanish-American population of New Mexico in their equal right of suffrage and in the enjoyment of equal rights of education with other citizens, present and prospective, of the new State. Your committee has not only by its proposed amendment of said Article XIX preserved such rights as are secured in the proposed constitution, but has made sections 1 and 3 of Article VII, on the elective franchise, and sections 8 and 10 of Article XII, on education, more secure against amendment than is provided in said proposed constitution. This was done to make clearer and more certain what seemed to be the unanimous wish of the people of New Mexico.

It will be noted that the amendment suggested in the substitute is not made mandatory, but is to be submitted to the electors for ratification or rejection, as a majority may determine.

It has been represented to the committee, and is no doubt true, that the people of the Territory were so desirous of securing state-

hood that when the proposed constitution was submitted its merits and demerits were not carefully considered, but, being submitted to them, as it was, as a whole, a large majority, through their great desire to secure statehood, voted for it without regard to what its provisions were. The amendment suggested by the substitute resolution reported by the committee, if adopted, will give the people of the Territory the power and opportunity which they otherwise would not have—to change any provision which in their desire for statehood may not have been sufficiently considered when the proposed constitution was ratified.

It will be seen from section 4 of the substitute resolution that provision is made for a separate ballot for the purpose of voting upon such amendment, which is to be printed on paper of a blue tint so as to be readily distinguishable from the white ballots which will be used for the election of officers at the same election, and that these ballots are to be delivered only to the election officers and to be delivered by them to the individual voter when he offers to vote.

These provisions were made because the election is in other respects to be held under and subject to the election laws of New Mexico now in force, which do not provide for a secret ballot and under which ballots are required to be “printed on plain white paper 3 inches in width and 8 inches in length or within one-quarter of an inch of that size.” (Compiled Laws of New Mexico, 1897, sec. 1634.) And said ballots are to have the names of all candidates for the respective offices printed thereon, and if the suggested amendments were required also to be printed on these ballots, it is obvious that there would not be room for that purpose, and besides, under the present election laws of the Territory the ballots can be distributed indiscriminately among the people some time before the day of election, and in other respects these election laws are lacking in the usual safeguards, while the provisions made by the substitute resolution in reference to the separate constitutional ballots will guarantee the necessary and usual safeguards.

The committee has also provided in said proposed substitute that the enabling act of June 20, 1910, shall be amended by making section 5 of said act so read as to remove the disqualification imposed upon the Spanish-American population of New Mexico who can not read, write, and speak the English language for holding State offices, including membership in the legislature of the new State. No just reason is found for such disqualification.

The evidence before the committee was that these Spanish-American citizens are eager for education and largely now speak the English language, and strive to advance the teaching of English to their children in all of their public schools, but that this provision of the enabling act is regarded by them as a reflection upon them and their race. They have at all times supported by their votes and the imposition of taxes the developing of the public-school system of New Mexico. They are largely an agricultural people, frugal, industrious, and earnest supporters of every movement intended to advance the progress, prosperity, and civilization of New Mexico.

Again, it was suggested that this disqualification violates the spirit and the letter of the treaty of Guadalupe Hidalgo between the United States and the Republic of Mexico, entered into on the 2d day of

February, 1848, by the terms of which the Territories of New Mexico and Arizona were for the most part acquired.

The said treaty above mentioned, after providing in article 8 thereof that such citizens of the Republic of Mexico prior to said treaty as manifested their desire to become citizens of the United States by remaining in such ceded territory for a period of one year, proceeds in article 9 thereof as follows:

Mexicans who in the territory aforesaid shall not preserve the character of citizens of the Mexican Republic, conformably with what is stipulated in the preceding article, shall be incorporated into the Union of the United States, and be admitted at the proper time (to be judged of by the Congress of the United States) to the enjoyment of all the rights of citizens of the United States, according to the principles of the Constitution; and in the meantime shall be maintained and protected in the free enjoyment of their liberty and property and secured in the free exercise of their religion without restriction.

It is doubted if the guaranty in Article IX to the previous citizens of the Republic of Mexico to be admitted * * * "to the enjoyment of all the rights of citizens of the United States, according to the principles of the Constitution" is properly observed or enforced by said section 5 of the enabling act, when such citizens are denied the right to hold office, as aforesaid, unless they can read, write, and speak the English language. No such language restriction is found in the Constitution of the United States and the committee believes that part of the enabling act containing such provision should be repealed.

The committee has also in its substitute resolution suggested an amendment to the proposed constitution of Arizona providing that the judiciary of the new State shall not be subject to recall from office by popular vote.

This amendment is not made mandatory, but is merely proposed and is to be submitted to the electors for their ratification or rejection at the first general election for State and county officers.

The controlling reason of the committee for proposing this change was the objection of the President of the United States to the recall provision of the Arizona constitution so far as it applies to the judiciary, and the belief on the part of the committee that if the recall as applied to the judiciary was again submitted to the people of Arizona it would meet the objection of the President.

The committee did not provide a separate ballot for voting on the proposed amendment to the Arizona constitution as it did in the case of New Mexico for the reason that Arizona has an effective and modern Australian election law, under which there is no restriction on the size or shape of the ballots, and the election on this amendment will be held under and subject to that election law, except so far as said law requires an educational qualification as a prerequisite to the right to vote. This exception was made in order to protect the Spanish-American electors of Arizona in the right to vote on this amendment.

VIEWS OF THE MINORITY.

The undersigned favor the immediate admission of New Mexico as a State in the Union.

All that remains to secure this result is for Congress to approve the constitution adopted by the people of New Mexico.

In the last Congress the Committee on Territories unanimously reported and the House of Representatives unanimously passed a resolution approving the constitution formed by the constitutional convention of the Territory of New Mexico and ratified at an election held in that Territory. A similar resolution was introduced by the present chairman of the Committee on Territories in the present House as House joint resolution 14.

We favor the passage of this resolution, so far as it relates to New Mexico, in the language and form as introduced in this Congress by the chairman of the committee and as passed by the House in the last Congress.

There is no good reason why Congress should not approve the constitution of New Mexico in accordance with the provisions of the enabling act. The resolution as reported by the majority of the committee proposes to require the people of New Mexico to vote upon an amendment to their constitution amending article 19 of the New Mexico constitution which relates to future amendments of that constitution. In our opinion there is no occasion for Congress to undertake to influence the action of the people of New Mexico in regard to the provision in the New Mexico constitution concerning amendments to that constitution. The provisions in the New Mexico constitution relating to constitutional amendments are no more strict than those in the constitutions of many of the States or in the Constitution of the United States.

We do not believe it to be the duty of Congress to pass upon the particular provisions in the constitution of a proposed State which is in form the constitution of a republican government, except it be some provision fundamentally destructive of republican institutions and representative government.

We object to the requirement that New Mexico shall be compelled to vote again upon a provision in her constitution merely regulating the method of amending the constitution.

We further object to the delay in the admission of New Mexico as a State which will be caused by requiring a new election to be held as proposed by the majority. New Mexico has complied in every respect with the provisions of the enabling act and has presented for approval a constitution to which Congress ought not to take any exception, and, in our opinion, the Territory of New Mexico is now entitled to immediate admission as a State.

As to Arizona, we agree with the majority of the Committee on Territories that there should be submitted to the qualified voters of

Arizona the question whether the provision in their proposed constitution providing for a recall of public officers shall apply to judicial officers, the said question to be submitted at an election to be held in that Territory before the Territory is admitted as a State.

We believe that the provision in the Arizona constitution as adopted in that Territory, which would authorize 25 per cent of the voters in any judicial district to require an election to be held to see whether some judge who may have rendered an unpopular decision shall be retained in office or ousted from his office, is fundamentally destructive of republican form of government.

We believe that such a provision in constitution or law would lead to constant assaults upon the judiciary; would tend to take away from the judges the spirit of independent desire to do right, would constantly hold before the judges the fear of hysterical excitement, would be destructive of the theory upon which our National and State Governments have been organized, and might lead to grave disaster if not chaos.

The enabling act authorized the approval or disapproval of the constitutions adopted by the people of the Territories of New Mexico and Arizona. We favor the approval of the constitution adopted by the people of the Territory of New Mexico and we favor the disapproval of the constitution adopted by the people of the Territory of Arizona unless and until it shall be so amended that the provision for recall of public officers shall not apply to the judiciary.

We therefore favor, as to Arizona, the passage of a resolution providing that there shall be submitted to the qualified voters of Arizona, at an election to be duly called, the question whether the provision in the Arizona constitution relating to recall of public officers shall be construed not to apply to judicial officers, and that the admission of Arizona as a State in the Union under its constitution shall be dependent upon the ratification of the proposition or amendment providing that the recall of public officers, as now proposed in the Arizona constitution heretofore adopted, shall not be construed to apply to judicial officers.

We believe that this question can be submitted to the voters of Arizona at the same time with the election of State and other officers, at an election to be called in conformity with the provisions in the enabling act, in order to save the delay and expense of two elections in Arizona, the election of officers being of course entirely ineffective unless the amendment to the constitution be ratified at such election; and we favor a resolution admitting Arizona into the Union as a State if the amendment so proposed to the constitution be ratified at the election to be called.

We therefore recommend that the resolution be adopted in the following form, to wit:

JOINT RESOLUTION Approving the constitution formed by the constitutional convention of the Territory of New Mexico, and providing for the admission of the Territory of Arizona as a State in the Union.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the constitution formed by the constitutional convention of the Territory of New Mexico, elected in accordance with the terms of the act of Congress entitled "An act to enable the people of New Mexico to form a constitution and State government and be admitted into the Union on an equal footing with the original States, and so forth," approved June twentieth, anno Domini nineteen hundred and ten, which said constitutional convention met at Santa Fe, New Mexico, on the third

day of October, anno Domini nineteen hundred and ten, and adjourned November twenty-first, anno Domini nineteen hundred and ten, and which constitution was subsequently ratified and adopted by the duly qualified electors of the Territory of New Mexico, at an election held according to law on the twenty-first day of January, anno Domini nineteen hundred and eleven, being republican in form, and not repugnant to the Constitution of the United States and the principles of the Declaration of Independence, and complying with the terms of said enabling act, be, and the same is hereby, approved, subject to the terms and conditions of the joint resolution entitled "Joint resolution reaffirming the boundary line between Texas and the Territory of New Mexico," approved on the sixteenth day of February, anno Domini nineteen hundred and eleven.

SEC. 2. That the Territory of Arizona be admitted into this Union as a State with the constitution which was formed by the constitutional convention of the Territory of Arizona elected in accordance with the terms of the enabling act, approved June twentieth, anno Domini nineteen hundred and ten, which constitution was subsequently ratified and adopted by the duly qualified voters of the Territory of Arizona, at an election held according to law on the ninth day of February, anno Domini nineteen hundred and eleven, upon the fundamental condition, however, that article eight of the said constitution of Arizona, in so far as it relates to the "recall of public officers," shall be held and construed not to apply to judicial officers, and that the people of Arizona shall give their assent to such construction of article eight of the said constitution.

That within thirty days after the passage of this resolution and its approval by the President, the President shall certify the fact to the governor of Arizona, who shall, within thirty days after the receipt of such certificate from the President, issue his proclamation for an election by the qualified voters of Arizona, to be held not earlier than sixty nor later than ninety days thereafter, at which election the qualified voters of Arizona shall vote upon the proposition that "Article eight of the constitution, in so far as it relates to 'recall of public officers,' shall be held and construed not to apply to judicial officers," and shall also vote for State and county officers, members of the State legislature, and Representatives in Congress, and all other officers provided for in said constitution of Arizona; said election to be held and the returns thereof made, canvassed, and certified as provided in section twenty-three of the enabling act approved June twentieth, nineteen hundred and ten.

If a majority of the qualified voters of Arizona voting at such election ratify and adopt the herein proposed construction of article eight of the constitution, the same shall be and become a part of the said constitution, and said article eight of said constitution, in so far as it relates to the "recall of public officers," shall have like effect as if judicial officers were expressly excepted therefrom.

If the proposed construction of said article eight of the constitution is duly ratified and adopted by the qualified voters of Arizona, the election of officers at the same election shall be and become valid and effective.

When said election as to the proposed construction of the said constitution and of State and county officers, members of the legislature, and Representative in Congress, and other officers provided for in said constitution has been held, the result thereof shall at once be certified by the governor of the Territory of Arizona to the President of the United States, and if the proposed construction of article eight of the said constitution of Arizona has been ratified and adopted by a majority of the qualified voters of Arizona voting at such election, the President of the United States shall immediately make proclamation thereof and of the result of the election of officers, and upon the issuance of said proclamation by the President of the United States, Arizona shall, without other proceeding, be deemed admitted by Congress into the Union by virtue of this joint resolution, upon the terms and conditions of the said enabling act approved June twentieth, nineteen hundred and ten, except as modified herein, and on an equal footing with the other States.

WILLIAM H. DRAPER.
FRANK E. GUERNSEY.
J. N. LANGHAM.
FRANK B. WILLIS.
WILLIAM H. ANDREWS.
RALPH H. CAMERON.

VIEWS OF MR. WEDEMEYER AND MR. YOUNG OF KANSAS.

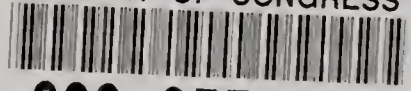
We agree to the minority views so far as they relate to New Mexico.

We disagree to the minority views so far as they relate to Arizona.

We are in favor of both Territories coming into the Union as States under the constitutions adopted by the people of both New Mexico and Arizona, pursuant to the enabling act, by large majorities. We are for the passage of House joint resolution 14, as introduced April 4, which joint resolution as originally introduced we favor without amendment.

W. W. WEDEMEYER.
I. D. YOUNG.

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